APPENDIX

Opinion of the Appellate Court

50482
PAUL V. BYRNE, JR.,
Plaintiff-Appellant,
vs.
THE FIRST NATIONAL BANK OF CHICAGO,
Defendant-Appellee.

Appeal From Circuit Court of Cook County.

MR. PRESIDING JUSTICE DRUCKER DELIVERED THE OPINION OF THE COURT:

Plaintiff, as a cestui que trust, brought an action for damages against the defendant, as trustee, alleging that the defendant breached its fiduciary duty in withholding the trust res in violation of the terms of the trust agreement and in dealing with adverse parties without advising or informing the cestui. The trial court entered an order granting a summary judgment in favor of the defendant. Plaintiff appeals from the denial of his motion to vacate that order.

The undisputed facts as set forth in the pleadings and affidavits are as follows: Ella Byrne was a life beneficiary of a trust administered by the defendant, the assets of which were distributable upon her death to her children, one of whom is the plaintiff. She died on April 20, 1964. On April 22, 1964, defendant distributed $200 to the plaintiff from the assets of the trust and on April 23 plaintiff received an additional distribution of $4,000, leaving only the securities of the trust to be distributed. Defendant immediately contacted the five beneficiaries of the trust (one of whom resided in California) to determine whether the beneficiaries desired distribution of the shares of stock in kind or in cash. Upon approval by all the beneficiaries of the plan of distribution in kind defendant proceeded to have the various securities transferred into their respective

names. On May 8 certain securities which had been transferred to the plaintiff's name and returned to the defendant were distributed to him, and the only securities remaining in the trust on that date for distribution to the plaintiff were those which had not been returned to the defendant from the respective companies or their transfer agents.

In June 1963 Jean Byrne (plaintiff's wife) filed an action against the plaintiff herein for separate maintenance and a decree therefor was entered in November. On May 7, 1964, the defendant herein was served with a notice of motion and copy of a petition that plaintiff would request a court injunction restraining and enjoining it from paying or delivering to the plaintiff herein any monies, certificates of stock or credit by reason of any beneficial interest possessed by the plaintiff under or by virtue of the trust. Although plaintiff contends that he received no notice of this proceeding, the notice of motion served on defendant was addressed to both the defendant and Paul Byrne, Jr. The injunction order was entered by the court on May 11.[1] On May 13 another order was entered enjoining the defendant from delivering to Paul V. Byrne, Jr., any other property which it still had in its possession. The defendant complied with that court order though it was not made a party in the aforesaid proceeding.

Plaintiff contends that on the day after Ella Byrne's death the defendant "could have and should have" distributed the estate; that defendant "devised a scheme by which the distribution was made contingent on the whim of other beneficiaries, and by reason of these dilettante provisions of such scheme was not able to dis-

[1] When the securities were delivered to the plaintiff on May 8 the trust department of the bank had not been aware of the pending proceedings. On May 13 the court ordered Paul Byrne, Jr., to return to the trustee the securities delivered to him on May 8, but this order was rescinded by the order of July 7 which allowed him to retain those securities.

tribute until May 8, 1964, when it made partial distribution, but refused to make complete distribution." Plaintiff alleged no facts in his complaint to support these accusations. Plaintiff also contends that since a trustee has a duty to protect and defend the trust res and also to keep his cestui informed of all matters which might affect the value of the trust property, that therefore the defendant should have notified him of the proceeding and also should have intervened therein to inform the court that it was hindering distribution of the remaining trust property.

Trustees are bound in the management of all the matters of the trust to act in good faith and employ such vigilance, diligence and prudence which ordinary men would exercise under like circumstances in dealing with their own affairs. *Harris Trust and Savings Bank* v. *Wanner,* 393 Ill. 598. Upon termination of the trust the trustee has the power only to perform such acts as are necessary to the winding up of the trust and the distribution of the trust property. *Breen* v. *Breen,* 411 Ill. 206. By its express terms the trust in the instant case terminated at the death of Ella Byrne on April 20, 1964. When defendant's trust department received notices of the aforementioned petition and order, less than one month after the termination of the trust, the only trust assets remaining for distribution to the plaintiff were shares of stock which had not been returned from the respective companies or their transfer agents. Upon receipt of these securities the defendant was required to observe the aforesaid injunction although it was not a party to the proceeding. In *American Zinc Co.* v. *Vecera,* 338 Ill. App. 523, the court at page 530 stated that:

> All persons having notice of an injunction are required to observe it. (Citing cases.) A person who participates in acts prohibited by an injunction may be committed for contempt, although he is not a party to the litigation nor named in the order granting the injunction. (Citing cases.)

Though a trustee does have a duty to protect and defend the trust property (*Holyoke* v. *Continental Ill. Nat. Bank & Trust Co.*, 346 Ill. App. 284), the suit brought by Jean Byrne for separate maintenance was a personal action against Paul Byrne, Jr., and was not a direct attack on the trust property. Therefore the trustee was under no duty to intervene for any reason in that proceeding. Certainly the trial court was aware that it was delaying final distribution of the trust property since it issued the injunction. Moreover, since the aforesaid action was personal against Paul Byrne, Jr., only the plaintiff in that proceeding was required to give notice thereof to him and no such duty devolved upon the trustee.

We find that there is no genuine issue as to any material fact and that the defendant did not breach any duty imposed upon it as trustee. A motion for summary judgment is properly granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Murphy* v. *Cory Pump & Supply Co.*, 47 Ill. App. 2d 382. Therefore, since the order granting the summary judgment was proper, the judgment of the Circuit Court is affirmed.

AFFIRMED.

ENGLISH and MCCORMICK, *J.J.*, concur.